## APPENDIX A

### Opinion of the Supreme Court of North Carolina Entered November 7, 1956

Appeal by Respondents from Armstrong, J., February, 1956 Term, Stanly Superior Court.

This proceeding was instituted in 1954 under G. S. 115-85 (now G. S. 115-125) for the purpose of acquiring a suitable site for a senior high school plant in the Albemarle City Administrative Unit, Stanly County. The petitioners alleged, and the respondents admitted the petitioners had determined that a senior high school plant is necessary in the Administrative Unit and that its Board of Trustees "has determined that the only suitable site for the location of said senior high school plant in the Albemarle City Administrative Unit is the 26.972-acre tract of land belonging to respondents." The parties stipulated the petitioners were unable to acquire the site by gift or purchase. Other pertinent facts are set forth in a former appeal reported in 242 N. C. 462. Appraisers appointed for that purpose fixed the amount of compensation to be paid at $37,660. From the order of the Superior Court of Stanly County confirming the report, the respondents excepted and appealed. The jury in the Superior Court fixed the amount of damages to be paid to the respondents at $40,000. From the judgment on the verdict, the respondents appealed, assigning errors.

Staton P. Williams for petitioners, appellees.

Sedberry, Clayton & Sanders

By: J. C. Sedberry, for respondents, appellants.

*Per Curiam.* Upon failure to acquire by gift or purchase, discretionary power existed in the petitioners to select and take land (not exceeding 30 acres) for school purposes. No

right to stay the taking existed in the respondents. *Board of Education* v. *Allen*, 243 N. C. 520, 91 S. E. 2d 180. The respondents' rights are limited to the recovery of damages. The petitioners' liability is to pay them. The parties failed to agree as to the amount. The jury, in accordance with applicable rules of law, decided the issue. No reason appears why the result should be disturbed.

No error.

Johnson, J., not sitting.

Rodman, J., took no part in the consideration or decision of this case.

---

**Judgment of the Supreme Court of North Carolina Entered November 7, 1956**

This cause came on to be argued upon the transcript of the record from the Superior Court of Stanly County:

Upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

It is adjudged by the Court here that the opinion of the Court, be certified to the said Superior Court, to the intent that the proceedings be had therein in said cause according to law as declared in said opinion.

And it is considered and adjudged further, that the Respondents, Eliza Jane Doby and J. Lillian Doby do pay the costs of the appeal in this Court incurred, to wit, the sum of Thirty-one and 40/100 Dollars ($31.40), and execution issue therefor.

---

## APPENDIX B

### Petition for Rehearing Denied

The Justices to whom the petition to rehear was referred having differed in their opinion as to whether or not it should be granted, the petition is denied. This 30 January, 1957.

R. Hunt Parker
Carlisle W. Higgins
Associate Justices.

---

## APPENDIX C

### General Statutes of North Carolina, Section 115-85

115-85. Acquisition of sites. — The county board of education or board of trustees of any city administrative unit may receive by gift or by purchase suitable sites for schoolhouses or other school buildings. But whenever any such board is unable to obtain a suitable site for a school or school building by gift or purchase, the board shall report to the county or city superintendent of public instruction, who shall, upon five days' notice to the owner or owners of the land, apply to the clerk of the superior court of the county in which the land is situated for the appointment of three appraisers, who shall lay off by metes and bounds not more than thirty acres, and shall assess the value thereof. They shall make a written report of their proceedings, to be signed by them, or by a majority of them, to the clerk, within five days of their appointment, who shall enter the same upon the records of the court. The appraisers and officers shall serve without compensation. If the report is confirmed by the clerk, the chairman and the secretary of the board shall

issue an order on the treasurer of the county school fund or, if a city administrative unit, upon the treasurer of such unit, in favor of the owner of the land thus laid off, and upon the payment, or offer of payment, of this order, the title to such land shall vest in fee simple in the corporation. Any person aggrieved by the action of the appraisers, including the county board of education or the board of trustees of any city administrative unit, may appeal to the superior court in term, upon giving bond to secure the board against such costs as may be incurred on account of the appeal not being prosecuted with effect. If the lands sought to be condemned hereunder, or any part of said lands, shall be owned by a nonresident of the State, before the clerk shall appoint appraisers therefor, notice to such nonresident owner shall be given of such proceedings to condemn, by publication once a week for thirty days in some newspaper published in the county, and if no newspaper is published in the county, then by posting such notice at the courthouse door and three other public places in the county for the period of thirty days: Provided, where sites have already been acquired and additional adjacent lands are necessary, such additional lands may be acquired as in this section provided, which lands, together with the old site, shall not exceed thirty acres.

---

## APPENDIX D

### Amendment to General Statutes, Section 115-85, By Chapter 1335 of the 1955 General Assembly

In condemnation proceedings under this section the procedure shall be the same as that provided in article 2, chapter 40, of the General Statutes to the extent that this section

does not fully set forth the procedure to be followed. In condemnation proceedings under this section the provisions of G. S. 40-10 shall not be applicable.

In the General Assembly read three times and ratified, this the 26th day of May, 1955.

(NOTE: There were other slight changes made in the old Section 115-85 when it was rewritten as Section 115-125 during the 1955 Session of the General Assembly of North Carolina, but none of the other changes have any pertinency to this case.)

---

## APPENDIX E

### Chapter 1162 of the 1953 Session Laws of the General Assembly of North Carolina

An Act to authorize the issuance of school building bonds and notes in behalf of the Albemarle City Administrative Unit as a special bond tax unit and the levy of taxes within such unit for the payment of the principal and interest of such bonds and notes.

(NOTE: The foregoing is the title of Chapter 1162 of the 1953 Session Laws of the General Assembly of North Carolina, and it epitomizes the contents of the Chapter which is so long that it would take too much space to copy it herein. This Chapter was ratified on April 29, 1953, and is referred to in many places in the transcript of the record printed for use in the North Carolina Supreme Court.)

---

## APPENDIX F

### Section 17, Article 2, of Chapter 40 of the General Statutes of North Carolina

Powers and duties of commissioners. — The commissioners, before entering upon the discharge of their duties, shall take and subscribe on oath that they will fairly and impartially appraise the lands mentioned in the petition. Any one of them may issue subpoenas, administer oaths to witnesses, and any two of them may adjourn the proceedings before them from time to time, in their discretion. Whenever they meet, except by the appointment of the court or pursuant to adjournment, they shall cause ten days notice of such meeting to be given to the parties who are to be affected by their proceedings, or their attorney or agent. They shall view the premises described in the petition, hear the proofs and allegations of the parties, and reduce the testimony, if any is taken by them, to writing; and after the testimony is closed in each case, and without any unnecessary delay, and before proceeding to the examination of any other claim, a majority of them all being present and acting, shall ascertain and determine the compensation which ought justly to be made by the corporation to the party or parties owning or interested in the real estate appraised by them. They shall report the same to the court within ten days.

## APPENDIX G

### Section 2, Article IX, of the Constitution of North Carolina

General Assembly shall provide for schools; separation of the races. — The General Assembly, at its first session under this Constitution, shall provide by taxation and otherwise for a general and uniform system of public schools, wherein tuition shall be free of charge to all children of the State between the ages of six and twenty-one years. And the children of the white race and the children of the colored race shall be taught in separate public schools; but there shall be no discrimination in favor of, or to the prejudice of, either race.

---

## APPENDIX H

### Section 2, Chapter 115, of the General Statutes of North Carolina

Separation of races. — The children of the white race and the children of the colored race shall be taught in separate public schools, but there shall be no discrimination in favor of or to the prejudice of either race. All white children shall be taught in the public schools provided for the white race, and all colored children shall be taught in the public schools provided for the colored race; but no child with negro blood, or what is generally known as Croatan Indian blood, in his veins, shall attend a school for the white race, and no such child shall be considered a white child. The descendants of the Croatan Indians, now living in Richmond, Robeson and Sampson counties, shall have separate schools for their children.